IN THE COURT OF APPEALS FOR THE STATE OF WASHINGTON
DIVISION TWO

STATE OF WASHINGTON, Respondent,	)	No. 55624-3-II
v	)	STATEMENT OF ADDITIONAL
BRYAN C. MATSEN, Appellant.	)	GROUNDS FOR REVIEW (RAP 10.10)

I, Bryan C. Matsen, have received and reviewed the opening brief prepared by my attorney. Summarized below are the additional grounds for review that are not addressed in that brief. I understand this Court will review this Statement of Additional Grounds for Review when my appeal is considered on the merits.

FACTS

The state was represented by deputy prosecuting attorney Claire A. Bradley (WSBA #27078) during plea negotiations and at the time of plea and sentencing on November 1, 2006. See Plea agreement, Statement of Defendant on Plea of Guilty, Judgment and Sentence, and VRP.

After Mr. Matsen had entered his pleas, and after the trial court had imposed life sentences, Ms. Bradley stated to the trial court:

> "Thank you, your Honor. There is one minor housekeeping matter, and that has to do with community custody. We didn't include it in the plea agreement. It seems superfluous in a case in which the defendant is getting life without the possibility of parole; however, I fear that if we don't include it in the judgment and sentence, [the] Department of Corrections will send it back."

VRP at 17, lines 14-21. The trial court agreed with Ms. Bradley and imposed the community custody.

ADDITIONAL GROUNDS

I. MR. MATSEN IS ENTITLED TO WITHDRAW HIS GUILTY PLEAS.

A. The plea agreement was based on a mutual mistake of the law.

State v. Barber, 170 Wn.2d 854, 248 P.3d 494 (2011) is analogous to this case. In Barber, the state failed to check the box for community placement under the "Sentencing Recommendations and Agreements" section. The Barber Court went on to state

> "We do not construe the absence of of any mention of community custody in the plea agreement as a promise from the State to recommend against community custody. Instead, we recognize it as reflecting the parties' mistaken understanding that community custody was not a component of barber's sentence."

Id. at 248 P.3d 498.

Barber overruled State v Miller, 110 Wn.2d 528, 756 P.2d 122 (1988), which allowed specific performance in a

plea agreement where there had been a mutual mistake as to sentencing consequences. Id. at 532. The Barber Court held that

> "[S]pecific performance is not an available remedy in cases of mutual mistake. Where the parties have agreed to a sentence that is contrary to law, the defendant may elect to withdraw his plea."

Id. at 248 P.3d 503-504.

It is likely that the state will attempt to rely on the Statement of Defendant on Plea of Guilty, which informed Mr. Matsen that community custody was attached to a conviction for a serious violent offense. Whereas this is true, the Statement of Defendant on Plea of Guilty is not the Plea Agreement -- which is devoid of any mention of community custody being imposed. As Barber makes clear, and as Ms. Bradley admits, the failure to mention community custody in the Plea Agreement is recognized as a mutual mistake of the law.

For this reason alone Mr. Matsen must be permitted to withdraw his guilty pleas.

B. Mr. Matsen's guilty pleas were involuntary.

It is incontrovertible that Mr. Matsen was not informed of the term of community custody -- which is a direct consequence of his plea. The state themselves informed the trial court of their failure to include community custody in

the Plea Agreement -- and Mr. Matsen's trial counsel remained silent, never making an utterance. In order for Mr. Matsen's guilty pleas to meet constitutional muster, he must be informed of the direct consequences of his plea. Boykin v Alabama, 395 U.S. 238 (1969). The failure to inform Mr. Matsen of the mandatory community custody term renders his pleas invalid. State v. Turley, 149 Wn.2d 395, 399, 69 P.3d 338 (2003).

C. Mr. Matsen was rendered ineffective assistance of counsel.

Mr. Matsen is entitled to the effective assistance of counsel at all stages of the criminal proceedings against him. Strickland v. Washington, 466 US 668, 104 S.Ct. 2052 (1984). Mr. Matsen's right to the effective assistance of counsel extends to plea negotiations. Lafler v Cooper, ___ US ___, 132 S.Ct. 1376 (2012); Missouri v Frye, ___ US ___, 132 S.Ct. 1399 (2012).

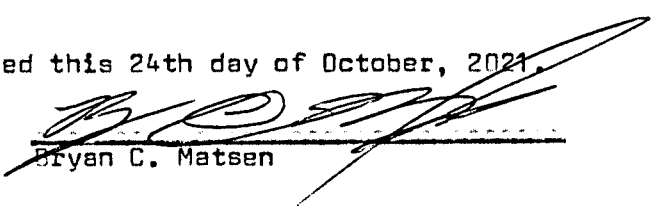
Here, Mr. Matsen's attorney failed to ensure that he knew the sentencing consequences that he faced. Mr. Matsen's attorney further failed to ensure that he wished to proceed with the plea once Ms. Bradley brought the mutual mistake to the attention of the trial court. The appropriate remedy for this sixth amendment violation is to allow Mr. Matsen to withdraw his guilty plea.

CONCLUSION

Even though Mr. Matsen was being sentenced to life in prison, community custody is not "superfluous" as Ms. Bradley stated to the trial court. The laws are ever changing -- which our legislature is (as the lawmakers) aware of. Whether the state feels that community custody was superfluous or not has no legal bearing on these proceedings. What has total bearing on these proceedings is that Ms. Bradley was required to adhere to the laws of Washington State when negotiating a plea agreement. She failed to do so, and Mr. Matsen must now be permitted to withdraw his guilty pleas.

For the reasons above, Mr. Matsen asks that this Court permit him to withdraw from his guilty plea and remand for further proceedings.

Respectfully submitted this 24th day of October, 2021.



Bryan C. Matsen

Bryan Matsen #300640
MCC / TRU / B110
Po Box 888
Monroe, WA
98272

SEATTLE WA 980
25 OCT 2021 PM 6 L

LEGAL MAIL

COURT OF APPEALS
DIVISION TWO
909 A STREET, SUITE 200
TACOMA, WA 98402

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